

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RIVERCARD, LLC,

Plaintiff,

v.

SCOT PATRIQUIN, *et al.*,

Defendants.

Case No. 2:13-cv-02123-LDG-NJK

ORDER

The plaintiff, Rivercard, LLC, filed the instant complaint against the defendant, Scot Patriquin, alleging various contractual claims, fraud-based claims, or, alternatively, unjust enrichment. In April 2010, Rivercard entered into an escrow agreement with Patriquin, in order to purchase shares of a Canadian company, Post Oak Productions, Inc. Rivercard alleges that Patriquin, through “multiple telephonic and electronic communications,” misrepresented the status of certain conditions contained in the agreement. Believing the conditions had been met, Rivercard authorized Patriquin to release \$800,000 from the account. Patriquin moves to dismiss¹ (#6). Rivercard opposes the motion (#9). The Court will grant the motion in part and deny it in part.

¹Alternatively, Patriquin moves for summary judgment. The Court here considers only the pleadings, and therefore addresses only the motion to dismiss.

1 Motion to Dismiss

2 The defendant's motion to dismiss, brought pursuant to Fed. R. Civ. P. 12(b)(6),
3 challenges whether the plaintiff's complaint states "a claim upon which relief can be
4 granted." In ruling upon this motion, the court is governed by the relaxed requirement of
5 Rule 8(a)(2) that the complaint need contain only "a short and plain statement of the claim
6 showing that the pleader is entitled to relief." As summarized by the Supreme Court, a
7 plaintiff must allege sufficient factual matter, accepted as true, "to state a claim to relief that
8 is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).
9 Nevertheless, while a complaint "does not need detailed factual allegations, a plaintiff's
10 obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels
11 and conclusions, and a formulaic recitation of the elements of a cause of action will not do."
12 *Id.*, at 555 (citations omitted). In deciding whether the factual allegations state a claim, the
13 court accepts those allegations as true, as "Rule 12(b)(6) does not countenance . . .
14 dismissals based on a judge's disbelief of a complaint's factual allegations." *Neitzke v.*
15 *Williams*, 490 U.S. 319, 327 (1989). Further, the court "construe[s] the pleadings in the
16 light most favorable to the nonmoving party." *Outdoor Media Group, Inc. v. City of*
17 *Beaumont*, 506 F.3d 895, 900 (9th Cir. 2007).

18 However, bare, conclusory allegations, including legal allegations couched as
19 factual, are not entitled to be assumed to be true. *Twombly*, 550 U.S. at 555. "[T]he tenet
20 that a court must accept as true all of the allegations contained in a complaint is
21 inapplicable to legal conclusions." *Ashcroft v. Iqbal* 556 U.S. 662, 678 (2009). "While legal
22 conclusions can provide the framework of a complaint, they must be supported by factual
23 allegations." *Id.*, at 679. Thus, this court considers the conclusory statements in a
24 complaint pursuant to their factual context.

25 To be plausible on its face, a claim must be more than merely possible or
26 conceivable. "[W]here the well-pleaded facts do not permit the court to infer more than the

1 mere possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—‘that the
2 pleader is entitled to relief.’ *Id.*, (citing Fed. R. Civ. Proc. 8(a)(2)). Rather, the factual
3 allegations must push the claim “across the line from conceivable to plausible.” *Twombly*.
4 550 U.S. at 570. Thus, allegations that are consistent with a claim, but that are more likely
5 explained by lawful behavior, do not plausibly establish a claim. *Id.*, at 567.

6 Factual Background

7 In the spring of 2010, the plaintiff, Rivercard, LLC, sought to invest in Post Oak
8 Productions, Inc., a Canadian company. The defendant, Scot Patriquin, was the attorney
9 for Post Oak, and “not only actively assisted with negotiations but also drafted and/or
10 provided all documents relevant” to the transaction (#1, ¶ 14).

11 Rivercard deposited \$800,000 into an escrow account managed by Patriquin, in
12 order to purchase a 25% interest in Post Oak (#1, ¶ 13). The money was to be released
13 from the escrow account following the completion of certain conditions (#1, ¶ 50). First,
14 Post Oak was to complete a licensing agreement with Harrah’s Interactive Entertainment
15 (“Harrah’s Agreement”) to gain exclusive rights to operate and market the World Series of
16 Poker Academy website (#1, ¶ 18). As a part of this agreement, Post Oak was to execute
17 contracts with celebrity poker players to “provide video-based and/or live stream instruction
18 and analysis” for the website (#1, ¶ 20).

19 Additionally, Patriquin was to ensure the completion of a Unanimous Shareholders
20 Agreement, a Subscription Agreement for the \$800,000 transaction, and a Loan
21 Agreement for an additional \$200,000 prior to the release of the escrow funds. Finally,
22 Rivercard was to receive a “duly executed original share certificate” for 346,668 shares in
23 Post Oak (#1, ¶ 28).

24 Prior to the closing of the deal, Rivercard alleges that “by and through multiple
25 telephonic and email communications, Patriquin made numerous material representations”
26 that the above conditions had been met (#1, ¶ 21). As an example of such

1 communications, Rivercard cites an email from Patriquin at the close of the deal from April
2 7, 2010, the subject of which stated “Executed Closing Documents” (#1, ¶ 22). Rivercard
3 alleges that Patriquin led them “to believe that the Harrah’s agreement was in fact complete
4 and that all preconditions and requirements of the Harrah’s agreement had been satisfied”
5 and that the “players’ agreements had been signed by the players” (#1, ¶¶ 19 & 20).
6 Shortly thereafter, on April 15, 2010, believing that all conditions had been met, Rivercard
7 sent an email approving the release of the funds held in escrow (#6, 4:4-5).

8 Rivercard subsequently discovered that the shares it was issued were in an empty
9 shell corporation (2084701 Ontario, Inc.) that was also known as Post Oak Productions
10 (#1, ¶ 29). It also discovered that the Unanimous Shareholders Agreement had not been
11 fully executed, that conditions of the Subscription Agreement were incomplete, that the
12 Harrah’s Agreement was incomplete, that conditions within that agreement were unfulfilled,
13 and that players’ contracts were incomplete² (#1, ¶¶ 19, 20, 30). “In or around October or
14 November 2010” Rivercard discovered that Post Oak was “technically insolvent and lacked
15 funds to continue operations,” and that “substantial portions of their investment funds” had
16 unknowingly been used to pay Post Oak’s prior debts (#1, ¶¶ 41-42). These payments
17 included debts collected by Patriquin (#1, ¶ 44).

18 Analysis

19 Rivercard’s complaint raises seven distinct claims: breach of contract, breach of the
20 covenant of good faith and fair dealing, tortious breach of the covenant of good faith and
21 fair dealing, breach of fiduciary duty, negligent/false representation, violation of U.S.
22 securities laws, and, in the alternative, unjust enrichment. Patriquin argues that Rivercard
23 is statutorily barred and equitably estopped from raising the first three claims (the
24 “contractual claims”); that unjust enrichment cannot be concurrently brought with the
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26 ²Rivercard’s complaint does not expressly present a timeline for these discoveries.

1 contractual claims; and that the Nevada statute of limitations bars the other three claims
2 (the “fraud-based claims”).

3 Contractual Claims

4 Rivercard alleges that Patriquin breached the parties’ escrow agreement by
5 misrepresenting the completion of multiple conditions in a variety of communications.
6 Without addressing these alleged misrepresentations, Patriquin argues that because
7 Rivercard gave written permission to release the funds, Rivercard’s contractual claims are
8 barred by statute, or alternatively, that Rivercard should be equitably estopped from raising
9 these claims.

10 Patriquin argues Rivercard’s contractual claims are barred by Nevada Revised
11 Statute 47.240(3), which states, “whenever a party has, by his or her own declaration, act,
12 or omission, intentionally and deliberately led another to believe a particular thing true and
13 to act upon such belief, the party cannot, in any litigation arising out of such declaration, act
14 or omission, be permitted to falsify it.” However, NRS 47.240(3) is inapplicable to
15 Rivercard’s claims. Rivercard is not claiming that Patriquin breached their contract by
16 releasing the escrow funds; rather, Rivercard claims that Patriquin breached their contract
17 by misrepresenting the completion of conditions necessary for the release of the funds (#1,
18 ¶¶ 51-56; 62; 69-74). That Rivercard gave Patriquin written authority to release the funds
19 is undisputed. Rivercard is not trying to “falsify” that writing. Rivercard’s claim relates to
20 events prior to the authorization, and therefore, the statute cited does not apply.

21 Patriquin additionally argues that Rivercard should be equitably estopped from
22 raising these claims. Patriquin cites *United Brotherhood v. Dahnke* to define equitable
23 estoppel (#6, 7:15-18). Yet Patriquin never applies this definition to the allegations of the
24 complaint. Patriquin argues that he “relied on [Rivercard’s] assertion he could release the
25 funds and should not now be held liable for such reliance” (#6, 7:23-24). But again,
26 Rivercard alleges breaches of contractual duty due to misconduct prior to releasing the

1 funds, not due to the actual release of the funds. Because Patriquin has not demonstrated
2 that equitable estoppel applies to this misconduct, and because Patriquin's statutory
3 defense does not apply to this situation, the Court denies his motion to dismiss as to these
4 claims.

5 Unjust Enrichment

6 Patriquin argues that Rivercard's unjust enrichment claim cannot be made
7 concurrently with Rivercard's contractual claims, because the Nevada Supreme Court has
8 held that unjust enrichment is "not available when there is an express, written contract
9 because no agreement can be implied when there is an express agreement."
10 *Leasepartners Corp. V. Robert L. Brooks Trust Dated Nov. 12, 1975*, 942 P.2d 182 (1997).

11 Patriquin alleges it is "indisputable" that there was an express contract (#6, 13:4).

12 However, Rivercard's claim was made in the alternative. Rivercard is therefore free to
13 argue, concurrently with its contractual claims, that no contract existed, and that "Patriquin
14 improperly benefitted, to [Rivercard's] detriment" from their quasi-contractual relationship
15 (#1, ¶ 44). The Court therefore denies Patriquin's motion to dismiss as to this claim.

16 Fraud-based Claims

17 Patriquin argues that Nevada's statute of limitations prevents Rivercard from raising
18 its fraud-based claims. Nevada Revised Statute 11.190(3)(d) creates a three-year statute
19 of limitation for fraud claims. Patriquin argues that the alleged misconduct occurred on or
20 before April 7, 2010, when the deal closed. Patriquin therefore claims that Rivercard's
21 complaint, filed November 15, 2013, falls beyond the three-year statute of limitations and
22 should be dismissed.

23 NRS 11.190(3)(d) states that "the cause of action in such a case shall be deemed to
24 accrue upon the discovery by the aggrieved party of the facts constituting the fraud or
25 mistake." Rivercard's complaint does not address when they discovered the facts
26 constituting the alleged fraud, and therefore does not address when the statute of


1 limitations began to run. Critically, however, Rivercard's response to the motion to dismiss
2 (#9) does not dispute that the statute of limitations began to run in April 2010.

3 Rivercard instead argues that the statute of limitations has been tolled due to
4 Patriquin's physical absence from Nevada, citing *Sutro Tunnel Co. v. Segregated Belcher*
5 *Mining Co.* for an 1885 interpretation of Nevada's statute of limitations (#9, 16:2-10). *Sutro*
6 *Tunnel Co. v. Segregated Belcher Mining Co.*, 19 Nev. 121 (1885). However, as
7 Patriquin's reply noted, under modern law, the statute of limitations does not toll when
8 service of process against the defendant remains available, despite their location outside
9 Nevada (#18, 9:17-26). See *Bank of Nevada v. Friedman*, 82 Nev. 417 (1966) (noting, in
10 overturning previous interpretations, "Were we to rule differently, a defendant could be
11 'present' for the purposes of being sued but not present for the purposes of the statute of
12 limitations—an anomaly which we reject"). See also Nev. R. Civ. P. 4(d)(1)-(2). Since
13 Patriquin was amenable to service of process, the statute of limitations has not been tolled.
14 Rivercard's fraud-based claims must therefore be dismissed. However, the Court will do so
15 without prejudice.

16 Accordingly,

17 THE COURT **ORDERS** that Defendant's Motion to Dismiss (#6) is GRANTED,
18 without prejudice, as to Plaintiff's negligent/false representation, breach of fiduciary duty,
19 and violation of U.S. securities law claims, and is DENIED as to Plaintiff's breach of
20 contract, breach of the covenant of good faith and fair dealing, tortious breach of the
21 covenant of good faith and fair dealing, and unjust enrichment claims.

22
23 DATED this 19 day of June, 2014.

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25 
26 Lloyd D. George
United States District Judge